IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

Crl.MC.No. 3401 of 2007()

CRIME NO. 471/07 OF PANDALAM POLICE STATION
CP.172/2007 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ADOOR

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PETITIONER: ACCUSED

SARASAMMA, AGED 45, W/O.KUMARAN,
EDAYILATHARAYIL, CHERICKAL
MUDIYOORKONAM P.O., PANDALAM.

BY ADV. SRI.V.S.SALIM

RESPONDENTS: COMPLAINANTS

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1. THE SUB INSPECTOR OF POLICE,
PANDALAM POLICE STATION,
PANDALAM.

2. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3401 of 2007

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Dated this the 12th day of November, 2007

O R D E R

The petitioner, a woman, faces indictment in a prosecution for offences punishable under the Kerala Abkari Act. The petitioner was not arrested in the course of investigation. No summons was ever served on her. Investigation is now complete. Final report has been filed. Cognizance has been taken by the learned Magistrate. The learned Magistrate has now issued a non-bailable warrants to procure the presence of the petitioner. It is in these circumstances that the petitioner has come to this Court with this petition under Section 482 Cr.P.C.

2. According to the petitioner her absence was not willful. The learned counsel for the petitioner submits that the petitioner is willing to appear before the learned Magistrate. But she apprehends that her application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is in these circumstances prayed that

appropriate directions may be issued to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which she could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when she surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself. Needless to say, the

petitioner's application for bail must be considered by the learned Magistrate in the light of the decision in **Sukumari** v. **State of Kerala** (2001 (1) KLT 22).

(R. BASANT)
Judge

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